IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

1) S.B. CIVIL WRIT PETITION NO.2805/2007.
Amit Kumar
Vs.
Rajasthan Technical University and Ors.

2) S.B. CIVIL WRIT PETITION NO.2813/2007.
Regional College for Education Research & Technology
Vs.
State and ors.

3) S.B. CIVIL WRIT PETITION NO.2806/2007.
Kaushal Kumar
Vs.
Rajasthan Technical University and Ors.

4) S.B. CIVIL WRIT PETITION NO.2807/2007.
Ishan
Vs.
Rajasthan Technical University and Ors.

5) S.B. CIVIL WRIT PETITION NO.2808/2007.
Akhilesh Kumar
Vs.
Rajasthan Technical University and Ors.

6) S.B. CIVIL WRIT PETITION NO.2810/2007.
Aditya
Vs.
Rajasthan Technical University and Ors.

7) S.B. CIVIL WRIT PETITION NO.2838/2007.
Amit Sharma
Vs.
State and Ors.

8) S.B. CIVIL WRIT PETITION NO.5314/2007.
Somesh Bhardwaj
Vs.
State and ors.

9) S.B. CIVIL WRIT PETITION NO.4866/2007.
Kumari Tapaswani Pradhan
Vs.
Rajasthan Technical University and ors.

Date of Order : October 10, 2007.

PRESENT
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri RP Garg,
Shri Satish Bijarniya,
Shri Sandeep Mathur,
Shri BR Rana and
Shri Anurag Sharma for the petitioners.

Shri AK Bhargava,
Shri Kapil Mathur,
Shri Shailesh Kumar Panwar and
Shri Vikrant Gupta for the respondents.

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Reportable

Above referred to nine identical writ petitions involve common questions of law and fact. They were therefore heard together and are being decided by this common judgment based on the facts of SBCWP No.2805/2007 (Amit Kumar Vs. Rajasthan Technical University and ors.).

2) The petitioner Amit Kumar was admitted to Bachelor of Engineering (B.E.)

Ist Year for the academic session 2006-07 under management quota of respondent No.3, Shankra Institute of Technology which is a private engineering college. The petitioner was given admission form as well as the prospectus. Respondents upon being satisfied with regard to all his eligibility requirements and upon the petitioner completing all the formalities, granted him admission in the aforesaid course. Admission form of the petitioner was required to be forwarded to the Board of Technical Education Rajasthan, Jodhpur and according to the petitioner, even the process of admission was over seen by the Observer of the respondent-University. In SBCWP No.2813/2007, admission list has been placed on record which is not only signed by the Principal of the College but also by Dr.H.D. Charan, Observer of the Technical University. After verification and

satisfaction of the eligibility of the petitioner, the University issued enrollment number to the petitioner and such enrollment number was forwarded to the respective colleges and was also conveyed to the petitioner.

3) Admission of the students to B.E. Course are made by three streams namely; (i) 15% seats are filled on the basis of All India Entrance Examination known as AIEEE, (ii) 70% on the basis of entrance examination conducted by State Technical Board known as RPETEAP and (iii) 15% under the Management quota. Students are required to appear in both internal as well as external examinations conducted by the concerned college/institute in presence of the observer of the University and the practical examinations are conducted on the basis of the copies supplied by the University. Only those candidates who are

eligible to appear in final examination are allowed to attempt practicals. While total number of marks for the Ist year of B.E. is 1000 and out of that, 520 marks are provided for internal and practical examinations and remaining 480 marks for final examinations. Former examinations are also known as “mid term examinations”. Final result is declared on the basis of the marks secured by the students in mid term examination as also in practical and final examinations. The petitioners were allowed to appear in the mid term examinations and in fact they have also appeared in the practicals.

4) According to the petitioners, the respondent No.3 allowed the petitioners to take mid term examinations because they considered them eligible for pursuing the said course. However, when the final examinations of the petitioners approached which were scheduled to commence from

18/4/2007, permission letter was not issued to the petitioners ostensibly for the reason that while some of the petitioners were under age and some were over age as per the criteria laid down by the Board of Technical Education for Rajasthan and it was only in that situation that petitioners were constrained to file the present petitions.

5) While all other petitions have been filed by the students themselves, S.B. Civil Writ Petition No.2813/2007 has been filed by the college concerned which petition too is founded on the same cause of action and the grounds.

6) This Court while issuing notices to the respondents directed them to permit the petitioners-students in all those writ petitions provisionally in Ist Year B.E. Examination 2006-07 which was to commence from 18/4/2007 with the stipulation that result of the examination shall not be

declared without prior permission of the court. This being the matter pertaining to academic career of the students was heard finally at the stage of admission itself with the consent of the parties.

7) I have heard Shri Satish Bijarniya, Shri Sandeep Mathur, Shri B.R. Rana and Shri Anurag Sharma, learned counsel for the petitioners-students and Shri R.P. Garg for the petitioner-college. I have also heard Shri A.K. Bhargava, Shri Kapil Mathur, Shri Shailesh Kumar Panwar and Shri Vikrant Gupta for respondent University and the Board of Technical Education.

8) In order to appreciate the rival submission, it would be appropriate to notice at this stage that while a separate criteria of eligibility has been provided under the relevant rules/guidelines for pre-entrance test for B.E. Course 2006-07 conducted by the Board of Technical

Education, a different eligibility criteria is provided for by the Central Counselling Board, Ministry of Human Resource Development, Government of India for All India Engineering Entrance Examinations, 2006 (for short, “AIEEE-2006”).

9) The eligibility criteria laid down for AIEEE is as under:-

> “Date of birth
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> Only those candidates whose date of birth falls on or after October 01, 1981 are eligible. However,in the case of Scheduled Caste (SC), Scheduled Tribe (ST) and Physically Handicapped (PH) candidates. Upper age limit is related by 5 years, i.e. SC, ST and PH candidates who were born on or after October 01, 1976 are eligible. Date of Birth as recorded in the Secondary Education Board/University certificate only will be taken as authentic.”

The eligibility criteria laid down in RPETEAP 2006 is as under:-

> “Age Limit : A candidate desirous of admission through RPETEAP-2006,

> should not be less than 16 years of age on 31st December, 2006 or more than 23 years of age on 1st October, 2006 i.e. He/she must have been born not later than 1st January, 1991 and not earlier than 2nd October, 1983 (Upper age limit is relaxable upto 3 years in case of candidates belonging to SC/ST). ”

10) Learned counsel for the petitioners has argued that all the petitioners / students fulfill the criteria of age as laid down by the Central Counselling Board of Ministry of Human Resource Development, Government of India. All of them except petitioner-Amit Kumar Srivastava, have been admitted to the B.E. Ist Year to the respondent-college on the basis of All India Engineering Entrance Examination, 2006 conducted by the Central Counselling Board. The application forms for their admission and examination forms were duly scrutinised by the respondent authorities including

their age certificate and date of birth at the time of admission. Entire admission process was supervised by the Observer appointed by the respondent-University. The petitioners did not conceal anything. The respondent-University also enrolled them and obviously this was done after the verification of the aforesaid formalities. It was argued that the Technical Board also approved of their admission and it was only thereafter that the petitioners were enrolled. When their examinations fee were accepted, they were allowed to appear in mid-term examinations and their practicals were also conducted under the supervision of observer nominated by the University, refusing to issue them permission letters at the nick of the time is wholly arbitrary and illegal. Eligibility of the petitioners was also checked and found in order whether they were admitted through the AIEEE or under the

management quota. Their candidature cannot be cancelled on the basis of the age criteria contained in the guidelines laid down by the RPETEAP, more particularly in the cases of those who have been admitted through AIEEE in view of the criterion laid down in the instructions issued by the Ministry of Human Resource Resource Development which govern the admission. Those who have been admitted against management quota also cannot be required to fulfill the age criteria of RPETEAT. If the age of the petitioners is examined in that light, the petitioners are eligible for admission according to the criteria laid down for AIEEE which inter-alia provides that the candidate whose date of birth falls on or before 1/10/1981 are eligible for admission and all the petitioners are born after that date. It was argued that age limit prescribed for RPETEAP 2006 would not

be applicable in the case of the petitioners simply because they have not been admitted to the concerned college/institution through RPETEAP 2006. Learned counsel for the petitioners relied on the judgments of the Division Bench of this Court in State of Rajasthan Vs. Bhupendra Singh : RLR 2002(1) 198 and judgments of the Supreme Court in Dr.Ami Lal Bhat Vs. State of Raj. : 1997(6) SCC 614, State of Rajasthan Vs. Hitendra Kumar Bhati : 1997(6) SCC 574, Om Prakash Shukla Vs. Akhilesh Kumar Shukla : 1986 (Suppl.) SCC 285 and A.P. Public Service Commissioner Vs. B.Sarat Chandra : 1990(2) SCC 669, judgment of the Delhi High Court in University of Delhi Vs. Ashok Kumar Chopra and another : 1990 All India Education Cases 443 and judgment of the Madras High Court in M.Hussain and etc. Vs. Bharathiyar University, Coimbatore and others : All India Educational Cases [1950-91(3) 730].

11) On the other hand, Shri A.K. Bhargava, learned counsel for Rajasthan Technical University, Kota opposed the writ petition and argued that according to the criteria of age laid down in RPETEAP, a candidate for admission to BE Ist Year 2006 should not be less than 16 years of age as on 31/12/2006 and 23 years of age as on 1/10/2006. In other words, he must have borne not later than 1/1/1991 and not earlier than 2/10/1983. However, upper age is relaxable upto three years in case of SC and ST. He argued that while some of the candidates are over age and some of them are underage. Thus only such candidates whose date of birth falls on or after 1/1/1981 are eligible for admission. In so far as the State of Rajasthan is concerned, for Engineering Colleges /institutions situated within its territory, criteria of age as laid down by the State Government in its

order dated 17/1/2004 is universally applicable to them all, even if the candidate has been selected and admitted through AIEEE. Shri A.K. Bhargava, learned counsel for the respondents has referred to the order dated 17/1/2004 passed by the Government of Rajasthan and argued that its instructions which are contained in the guidelines enclosed therewith would be binding on the question of eligibility of candidate and would even have overriding effect over the guidelines issued by the Government of India. Shri A.K. Bhargava contested the position that petitioners have been enrolled and argued that for some of the petitioners, they have been merely issued temporary enrollment numbers but they were not finally enrolled. It was argued that even if the Observer of the University has put his signatures on the check list that does not tantamount to approval of the

admission of the candidates or relaxation of the age criteria mentioned therein. It was argued that in fact the Observer merely signed the admission list but did not check eligibility of the candidates and therefore the list cannot be binding on the University. It was denied by him that the respondent-University has conducted any internal examination and the practical examination of the petitioner as alleged. Shri A.K. Bhargava relied on the judgments of the Apex Court in Prabhu Daya Sesma Vs. State of Rajasthan : SCC 1986(4) 59, CBSE & Others Vs. P.Sunil Kumar & Ors. : SCC 1998 (5) 377, Gurunank Dev University Vs. Parminder Kumar Bansal and others : SCC 1993 (4) 401, Regional Officer and CBSE Vs. Kumari Sheena Peethambaran and ors. : SCC 2003(3) 719 and judgments of this Court in Manoj Kumar Sharma Vs. RPSC : RLR 1999(1) 471, Ramji Lal Meena Vs. High Court of

Judicature for Rajasthan & Ors. : RLR 2001 (2) and Miss Reena Jain and others Vs. Mohan Lal Sukadia University and ors. : WLC 2002 (2) 241.

12) I have given my earnest consideration to the rival submissions and perused the case law cited at the bar.

13) Though a large number of judgments were relied on by the learned counsel for the parties in support of their respective cases and some of those judgments though relating to age criteria and examination process. In order that the judgment does not become bulkier and considering that those judgments turned out on their own facts, therefore, I have proceeded to decide the present matter on its own facts on the basis of relevant rules / instructions.

14) Students who were denied appearance in the examination and were permitted to appear provisionally under the orders of the

court can be divided in two categories, one of those students who were admitted through AIEEE and the other category is of those whose admissions were made against the seats of management quota. What has to be therefore examined is whether in view of the age criteria as laid down by the Government in its guidelines dated 17/1/2004, the students of these two categories would not be entitled to admission as per criteria of age laid down in the instructions issued by the Central Counselling Board, Ministry of Human Resource Development supra. I shall however first deal with the students of first category who are admitted through AIEEE. Though the respondents have not been able to deny the fact that their admission was based on the merit secured by them in AIEEE which examination formed common basis for such admission not only in the engineering college/institute of the State

of Rajasthan but also throughout the country. The only argument which the learned counsel for the respondents has canvassed for applying the age criteria laid down vide circular dated 17/1/2004 is that the guidelines laid down in that circular clearly provided that process of selection will be followed strictly in accordance with the guidelines contained in that Circular and that the instructions contained in such guidelines would be binding on all and would have an overriding effect over any other instruction to the contrary issued by the Government of India. But the logic of this argument is indeed very difficult to appreciate and still more difficult to approve of. In so far as students admitted to BE Ist year on the basis of common entrance test are concerned, there can be no room for the argument that even their admission would be governed by the criteria

laid down in the guidelines of the Circular dated 17/1/2004 issued by the State Government. This cannot be accepted that the candidates who have been admitted on the basis of merit secured by them in the common entrance test of AIEEE which is an altogether different examination on the basis of which a separate merit list is prepared and then allocation of seats is made throughout the country. If the argument of the respondent is accepted that even if the criteria contained in guidelines issued by AIEEE would be at variance with those contained in the guidelines issued by the State Government, yet the selected candidate shall have to fulfill the eligibility criterion of age laid down in the guidelines for admission based on RPETEAP, this is likely to result in absurd consequences that while those admitted on the basis of very same entrance test in other States of the

country would have a different age criteria than the students seeking admission to the colleges/institutes in the State of Rajasthan. It would be clearly discriminative and violative of Article 14 of the Constitution of India. Even otherwise, the criteria which has been specifically laid down by the Central Counselling Board, Ministry of Human Resource Development cannot be given a complete go-bye particularly when object of this criteria is to allocate the students for admission to different engineering colleges of the country through AIEEE. I am therefore not persuaded to accept the argument advanced by the respondents.

15) Coming now to the second category of students who are admitted against the seats of management quota, a perusal of the guidelines for common entrance test for the BE, more particularly its caption, would

show that these guidelines are meant for admission to B.E. which are made on the basis of common entrance test admission. It is however argued that this very criteria should be applied to the students admitted to B.E. against management quota. What has to therefore examined is whether the respondents can insist on the criteria of age contained in those guidelines to be applied even to the students who are admitted against the seats of management quota, in preference to the age criteria containing the instructions issued by the Central Counselling Board. Learned counsel for the respondents could not point out from the guidelines issued by the Technical Education Board, Government of Rajasthan, which are primary for common entrance test for admission to B.E. as to if and how would the same govern the case of admission of students against the management quota.

Although, the schemes refers to the seats of management quota and transfer of the un-filled seats of common entrance test to management quota in the event of they are not being filled up. Yet, there is no specific provision which might throw any light on the criteria of age referred to therein being applied also to students admitted against the management quota. As against this, if we look at the instructions issued by the Ministry of Human Resources Development, we find that similar criteria of age also exists in those instructions which is applied for admission of students to the same college/institute. In these facts therefore it is clear that there are two criterias. The respondents are seeking to apply the criteria of age prescribed for the students admitted on the basis of common entrance test for admission under the RPETEAP. Under these guidelines, it is

provided that 15% seats in the unaided private institution shall be filled up by management of technical institution through counselling at their own level in view of the judgment dated 14/8/2003 passed by the Supreme Court in Islamic Academy and others Vs. State of Karnataka and others. It provides that 15% seats of unaided private technical institutions and 15% seats in the self-financed courses in aided institutions shall be filled up on the basis of All India Examinations, provided that if such seats remain vacant after allocation of students by the co-cordinator of All India Entrance Test, the same may be filled on the basis of common entrance test of the State. It is thus clear that while 15% seats have been allotted to be filled by the management in view of judgment of the Hon'ble Supreme Court in Islamic Academy, supra, criteria/method of admission against the

management quota has been left to be decided by private technical institutions themselves. This however does not mean that they can give complete go-bye to the prescribed eligibility criteria of admission such as passing of qualifying examination etc. But when it is found that there are two age criterias, one laid down by the State Government in its guidelines for common entrance test for admission to B.E. for the State and other by Ministry of Human Resources Development, going by the logic of the respondent-University that under their guidelines, the age criteria laid down by the State Government can be applied on the basis of analogy even to the students admitted against management quota, same analogy can also be derived by the institutes/colleges when they decide to rely on the guidelines laid down by the Central Counselling Board, Ministry of Human

Resources Development, Government of India. In the context of the present case, the question that poses itself if for answer is that there are these two criterias and which of these should be applied to the seats of management quota, there is no reason then why one which is favourable to the students should not be preferred over the one which is not favourable to them, acceptance of which might result in their admission being jeopardised. In the circumstances therefore, I am not inclined to accept this argument of the learned counsel for the respondents either.

16) The argument advanced by the learned counsel for the respondent University that though the observer appointed by them has put his signatures on the admissions list but, that cannot be taken as approval of admissions granted. I am not impressed by this argument as well. When the Observer was

deputed and in his presence the process of admission was undertaken and admissions were finalised, the respondents now when the petitioners have studied for whole of the year cannot be permitted to turn around to say that the presence of their Observer was there for the sake of the presence and not for actual supervision of the process of admission. Such an argument merits outright rejection, which is accordingly rejected.

In view of what has been discussed above, the writ petitions preferred by the petitioners deserve to be allowed and are accordingly allowed and the writ petitioners and the students of petitioner-college in SBCWP No.2813/07 are held eligible for admission to B.E. and continue their studies for the entire duration of the said study course by treating their admission having been validly made. The respondent-University is directed to declare their result of Ist

Year B.E. Examination and permit them to further prosecute their studies in accordance with the law. There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

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